

The Honorable Robert S. Lasnik

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

EDMONDS SCHOOL DISTRICT,

Plaintiff/Appellant,

v.

A.T., a minor child, and R.T. and I.T.
his parents,

Defendants/Appellees.

Case No. 2:16-cv-01500-RSL

DEFENDANTS' OPPOSITION TO
PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT AND
CROSS-MOTION FOR SUMMARY
JUDGMENT

I. INTRODUCTION

A.T. is a student with a rare psychological diagnosis, prodromal schizophrenia, whose parents unilaterally placed him in a residential school in order for him to access an education. Contrary to Plaintiff Edmonds School District's ("ESD") assertion that it offered A.T. an appropriate program, A.T. could not receive an education in a non-residential placement, due

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SUMMARY JUDGMENT- 1

Cassady Law PLLC
506 Second Avenue, Suite 1400
Seattle, Washington 98104
Phone: 206-452-5665
Fax: 206-299-9960

1 to his complete inability to self-regulate and organize thoughts, and to attend and stay in
2 class, as well-established in the administrative record. The profound effects of prodromal
3 schizophrenia on A.T.'s ability to function in a school environment and even attend a public
4 school educational program, as detailed in the administrative record, cannot be
5 overemphasized.

6 The placement of A.T. at a residential school, Provo Canyon (Provo), was necessary
7 in order to provide him supportive services to allow him to receive educational benefit, and
8 thus the ALJ's order reimbursing A.T.'s parents should be upheld. In residential placement,
9 Student has made gains in behavioral skills, participation in therapy and participation in
10 academics.

11 Moreover, as the ALJ found, the Plaintiff offered Student extraordinarily deficient
12 educational programming in light of the seriousness of the Student's disabilities, and the
13 administrative record is replete with procedural violations of IDEA. A.T. had been on IEPs
14 since preschool for ADHD and deficits related to a pre-adoption history of severe abuse and
15 neglect. However, with the onset of prodromal schizophrenia in the ninth grade, his academic
16 and functional performance plummeted until the Defendants enrolled him at Provo Canyon
17 residential school in December of his eleventh grade year. Despite two years of clearly
18 deteriorating behavior including at least five months of disability related school refusal, a
19 diagnosis of prodromal schizophrenia in April of the tenth grade, private school
20 reimbursement notification by Defendants, and the filing of a due process hearing, ESD failed
21 to conduct a reevaluation of the Student or amend A.T.'s IEP to offer more than seventy-five

minutes a week of special education and related services.

II. STATEMENT OF FACTS

A. A.T.'s Early Childhood Experiences of Abuse and Neglect Predisposed Him to Difficulties In School And Development Of Schizophrenia In Later Life.

Administrative Law Judge Michelle Mentzer succinctly and accurately summarized

R.T.'s early childhood in the first paragraph of her Findings of Fact:

The Student was born to a teenage mother who was killed during a drug deal when he was 18 months old. The identity of the Student's biological father is unknown. Child Protective Services (CPS) records indicate the Student was exposed to street drugs *in utero* and alcohol during breast-feeding. Before the mother's death, there were more than 24 CPS allegations of child neglect and abuse against her. The Student was removed from her custody before she died, when he was 15 months old, and placed with his maternal grandparents. . . throughout the years he lived with the maternal grandparents, there were CPS allegations of neglect and abuse against them. The Student was removed from their home when he was three and a half years old and placed in Washington State custody. He experienced a failed adoption when he was three years and eight months old, due to behavioral problems and the inability to form a loving parent-child bond. Approximately a month later, he went into foster care with the Parents, where he lived with them and the Mother's 10 year old biological daughter. The Parents adopted the Student when he was approximately four and a half years old.

AR 1107 ¶1 (citing to AR 2181-2182, 2272-2273).

R.T. and I.T., the Defendants in this case, are the Parents who adopted A.T. at four-and-a-half years of age (Parents). The record reflects that they provided a secure, loving and

1 stable home to A.T. until they were forced to enroll him at their own expense at Provo
2 Canyon, a therapeutic residential school in Utah, when A.T was sixteen years old.

3 Psychologist Stacy Cecchet¹ described the impact of childhood abuse and neglect on
4 A.T.'s development, school performance, and susceptibility to schizophrenia in later life.
5 Individuals have a window of opportunity from birth to six or seven to develop a stable
6 personality. Tr. 913: 7 - 925:15.² If a child doesn't have a stable upbringing during this time
7 period, he cannot cope with stress as effectively in later life as others. *Id.* Individuals with
8 stable personalities do not take challenges to their self-esteem to heart because they have a
9 baseline understanding of themselves as worthy; individuals with unstable personalities do
10 not have this, so challenges and threatening social situations are far more likely to make them
11 feel like an unworthy person at their core. *Id.* Tr. 919: 920 -925:15. Also, individuals from
12 abuse and neglect backgrounds do not have parents who model organized lives and
13 appropriate functioning in everyday life; so they literally do not know how to do it. *Id.*

14 ¹ Dr. Stacy Cecchet testified for the Defendant at hearing. She assessed the Student and generated
15 her report before Parents' met with counsel in their education case. Tr. 154:25; AR 2179. No District
16 witness, expert or otherwise, testified to disagreement with her report or her testimony. *See* AR 1-1103. Dr.
17 Cecchet received a PhD in clinical psychology from Seattle Pacific Lutheran University in 2012. AR 2210.
18 As part of her graduate work she did an 18 month rotation at one of the Washington State Children's Long-
19 term Inpatient Program (CLIP) residential facilities, the Child Study and Treatment Center (CSTC). AR
20 2201; Tr. 913:11-915:3 After receiving her PhD, she completed a postdoctoral fellowship in pediatric
21 psychology at John Hopkins University, where she practiced at the Kennedy Krieger Institute's Behavioral
Management Clinic. *Id.* Dr. Cecchet has participated in a number of research projects and has published
several articles in professional journals. AR 2220, 2202-2203. For the last three years, she has maintained a
clinical practice in Everett, Washington, working with children and adolescents with significant behavioral,
mental health and academic issues. Tr. 913-915.

² "Tr." refers to the transcript of the administrative hearing and appears at pages 1 through 1103 of the
Administrative Record of OSPI Cause No. 2015-SE-0106X.

1 Academic settings generate stressful situations: completing a big assignment, making
2 satisfactory grades, fitting into social environments, and connecting with academic officials.
3 A student with an unstable personality cannot regulate emotions when confronted with such
4 everyday stresses and is far more likely to act out with explosive behavior and aggression; to
5 experience deficits in social skills that may lead to desperate attempts to achieve closeness
6 and affection, including through acts of aggression; and to have cognitive disorganization that
7 makes linear thinking difficult and routine tasks like getting up in the morning, going to
8 school, remembering to turn in your homework assignment, etc., difficult. *Id.*

9 And tragically, A.T.'s history of childhood abuse and neglect increased his chances of
10 developing schizophrenia in later life. Tr. 927:15 - 929:24. Dr. Cecchet testified that, if you
11 think of a gene as a light switch, A.T. was born with a "wiggly light switch" for
12 schizophrenia. Under the stress diathesis model of schizophrenia, stress accumulated -- from
13 severe abuse, severe neglect, exposure to drugs and alcohol, unstable living placements,
14 failed placement with grandparents --- until the light switch for schizophrenia flipped to the
15 "on" position. Tr. 929: 15-24.

16 Youths with schizophrenia do not normally have the full hallucinations and delusions
17 typical of schizophrenia. They have, like the Student, atypical thoughts, nonlinear thoughts
18 that have some delusional elements, and some atypical sensory experiences; this is prodromal
19 schizophrenia. *Id.* Tr. 934:1-25, 936:22-25. Using the analogy of the light switch, prodromal
20 schizophrenia is like a fluorescent light flickering before it comes on completely. Tr. 930:14-
21 25.

B. A.T. Exhibited Social, Emotional and Behavioral Issues Throughout Preschool, Elementary and Middle School

A.T. exhibited difficulty bonding with his adoptive family and interacting with peers as a preschooler. Tr. 29:18-25. Several preschools exited A.T. for aggressive behavior towards other students. *Id.* The Mother testified that A.T. desired friends but had difficulty making and keeping them, because he did not understand how to relate to others socially. Tr. 37:12-38:9. Despite social and behavioral difficulties in preschool, A.T. loved to read and scored above average in intelligence testing. Tr. 33:5-9, 33:13-34:5; AR 1562. Parents stated that A.T.'s education has been "extremely important" to them. Tr. 33:16.

A.T. attended Edmonds School District (ESD) throughout his school career, from pre-school up until his enrollment in Provo in December of what should have been his tenth grade year, and he always had an Individualized Education Plan (IEP). Tr. 30:20-31:3. Early ESD evaluations referenced Attention Deficit Hyperactivity Disorder (ADHD) and described childhood abuse and neglect as sources of disability. AR 1640. A.T.'s IEPs (including Behavior Intervention Plans, or "BIPs") addressed deficits in social skills, behavior, attention and executive function. Tr. 31:4-17.

Throughout elementary and middle school, A.T. received special education support for emotional and behavioral issues. A.T. participated in a self-contained classroom designed for students with social/emotional deficits from first through third grades. Tr. 44:15-45:21, Tr. 72:11-21; AR 1637. From fourth through sixth grades, A.T. attended a general education classroom with a behavior plan and some pull-out special education support for emotional

1 regulation. AR at 1637; 1726. During A.T.'s seventh and eighth grade years, A.T. attended
 2 general education classes, but continued to receive special education support in an Intensive
 3 Learning Support classroom ("ILS", a classroom for students with behavior disorders) when
 4 he needed an alternate setting to regulate his thoughts, feelings or behaviors. AR 1726, 1729;
 5 Tr. 47:1-19, 629:24-630:1.

6 **C. When A.T. Developed Prodromal Schizophrenia in His Ninth Grade Year, His**
 7 **Academic and Behavioral Functioning Declined Dramatically but ESD Did Not**
 8 **Respond by Providing Appropriate Educational Programming**

9 **1. The Onset of Prodromal Schizophrenia**

10 Dr. Cecchet testified that A.T. experienced the onset of prodromal schizophrenia a
 11 year to eighteen months prior to her evaluation dated April 7, 2015. Tr. 1007:2-13, 2179. In
 12 other words, onset occurred sometime from the beginning to the middle of A.T.'s ninth grade
 13 year.

14 **2. A.T.'s Decline in Academic and Functional Performance**

15 A.T.'s academic and functional performance declined drastically during his ninth
 16 grade year (2013-2014) at Meadowdale High School ("MDHS").

17 A.T.'s grades declined in correlation to his behaviors. Tr. 52:18-25. A.T. finished the
 18 second semester of eighth grade with a GPA of 2.871. AR at 1699, 2375. By comparison, in
 19 the first semester of A.T.'s ninth grade year, he earned a GPA of 1.667 with 3.0 credits
 20 earned of 3.5 credits attempted, and in the second semester a GPA of 1.050 with 2.5 credits
 21 earned of 3.5 credits attempted. AR at 2380.

1 Teachers frequently removed A.T. from classes due to behaviors. A.T.'s math teacher
2 had to remove A.T. to the hallway because his disruptions annoyed other children who then
3 refused to engage in group learning activities with A.T. Tr. 53:9-17. In A.T.'s math class,
4 A.T. stood out as *the* student with behavioral issues. Tr. 440:5-10. A.T. was also put out of
5 band class because of disruptive behaviors with his band teacher remarking that "[A.T.]
6 seldom can stay in the clinic session without being removed by the para pro." Tr. 53:1-5;
7 53:18-54:6; AR at 1776.

8 In addition to missing class because of removals by teachers, A.T. eloped from classes
9 and did not return, often expressing a need to go to the bathroom or the nurse's office. Tr.
10 280:19-281:2. Teachers described "continuous" requests to leave class. Tr. 435:7-16, 436-
11 437:15; AR at 1769. Per the Mother and teachers, A.T. would sometimes just wander around
12 the school building. *Id*; AR at 1774. The Parents frequently received automated telephone
13 calls from the school in the evening indicating A.T. had missed specific class periods. Tr.
14 54:1-55:6; 280:21-24; 55:25-56:6.

15 Despite A.T.'s documented behavioral regression, teachers testified at hearing that
16 they did not instruct A.T. any differently than other students in the class, and did not have
17 access to his BIPs or his complete IEP. Tr. 452:7-21. Teachers routinely received only "IEP-
18 At-A-Glance" for students with IEPs, Tr. 456, which did not include behavior plans. IEP-At-
19 A-Glance is a "shorter, consolidated" piece of the larger IEP that is given to general
20 education teachers, Tr. 589:14-17, and A.T.'s math teacher did not recall ever seeing a
21 behavior plan for A.T. or using a behavior plan to respond to his behaviors. Tr. 452:7-21.

1 A.T. began to exhibit oppositional behavior at home in completing homework and
2 keeping track of assignments. He refused to use the communication notebook between home
3 and school that he had used in middle school to help his Parents keep track of assignments
4 and school performance. Tr. 78:19-79:2. In middle school, the Parents would work with
5 A.T. on weekends and after school on past-due assignments, but in the ninth grade, there
6 would always be “a big fight” when Parents attempted to work with A.T. on school
7 assignments and he would sometime sit at the table for three hours without writing a single
8 word. Tr. 79:16-22, 55:12-17, 303:8-15.

9 Despite A.T.’s significant drop in grades, assignment completion, and behavioral
10 performance at school in the ninth grade, ESD did not significantly change A.T.’s IEP or
11 behavior plan during the ninth grade, except to eliminate 1:1 behavioral instruction from
12 School Psychologist and Behavior Interventionist Christine Sutton, Tr. 60:2-25; AR at 1758,
13 1800, as part of a school policy applied to all special education students. Tr. 838:18-842:2.
14 Elimination of 1:1 behavioral instruction with Sutton in the January 29, 2014 IEP occurred
15 despite the fact that A.T.’s evaluations, IEPs, FBAs and BIPs over many years stressed his
16 need for close, personal relationships with staff and documented assessments indicating
17 withdrawal and depression. Tr. 853:22- 858:1. In fact, the January 29, 2013 ESD reevaluation
18 forming the basis for A.T.’s February 8, 2013 (8th grade) and January 29, 2014 (ninth grade)
19 IEPs specifically states A.T. needs counseling services. AR 1727.

20 School Psychologist Sutton testified that, although A.T.’s 1:1 behavior minutes with
21 her were removed from the January 29, 2014 IEP, she attempted consultations with MDHS

1 staff to address and remediate A.T.'s behaviors, but staff were not receptive. Tr. 818:6-9,
 2 839:6-18, 842:12-843:15, 824:23-825:2-16; AR at 1800, 1812-181, 1807, 1818. Sutton's
 3 relatively unsuccessful attempts to have other staff talk with A.T., to preserve A.T.'s self-
 4 esteem around band, and to get other staff to recognize A.T.'s strengths, are consistent with
 5 A.T.'s written IEPs and Behavior Intervention Plans ("BIPs"). See AR at 1788-1806, 1746-
 6 1765.

7 **3. A.T.'s Behaviors at Home and in The Community Declined During His Ninth** 8 **Grade Year in Ways Impacting His School Performance**

9 In the ninth grade, A.T. refused to stay after school to work on homework and began
 10 to follow other children who were walking home from school to their homes instead of his
 11 own. Tr. 99:6-100:7, 822:24-823:14. Sutton encouraged MDHS staff to investigate the
 12 reasons for A.T.'s refusal to stay at school, but staff dismissed her recommendations. AR
 13 1807-1811. Parents and MDHS staff knew A.T. was following other children home to their
 14 houses, and Sutton found this odd social behavior typical for A.T, who just wanted friends
 15 and desperately sought reactions from others. AR at 1818; Tr. 822:24-823:14.

16 A.T.'s behavior at school had escalated significantly by the end of the ninth grade,
 17 right before the summer of 2014. MDHS staff recognized that his behaviors were starting to
 18 "ramp up," including repeatedly asking for money, following girls home, not leaving them
 19 alone, and engaging in fights. AR at 1818. On May 23, 2014, MDHS's Dean of Students
 20 Brian Grijalva emailed MDHS staff, "Might need to develop a plan on how to reign this
 21 kiddo in if he's going to make it to the end of the school year in one piece." *Id.* Yet the school

1 did not convene an IEP meeting to increase special education, change A.T.'s behavior plan,
 2 or initiate a reevaluation to investigate the reasons for the behaviors or how to address them.
 3 Tr. 63:17-64:1.

4 Unfortunately, A.T.'s desperate attempts to connect with other students contributed to
 5 his first juvenile offenses and his developing disregard of home curfews. Following students
 6 home after school resulted in trespassing charges and, on one occasion, in A.T. obtaining and
 7 using a BB gun at another child's house. Tr. 99:6 -100:7. Moreover, A.T.'s initial failures to
 8 come home from school at the end of the school day during the second half of the ninth grade
 9 year escalated over time to staying away from home overnight and for entire weekends Tr.
 10 84:19-85:2; 166:5-9, 281:8-10.

11 **D. Summer Between Ninth and Tenth Grades**

12 A.T.'s behavior in the summer of 2014 grew increasingly bizarre. He reported to his
 13 Mother that he was sleeping on the street with homeless people and that he felt a kinship with
 14 them. Tr. 65:14-19. He was defiant and destroyed property when at home. Tr. 66:4-13.

15 Parents filed an At-Risk Youth Petition ("ARY")³ on July 1, 2014, "because of the
 16 experience [A.T.] was having both at home and at school." Tr. 97:11-14 (Mother) (emphasis
 17 added). A.T.'s mother testified that she thought once the ARY set structures for school

18 ³ ARY Petitions, when granted, authorize a court to impose penalties on youth for committing non-
 19 criminal offenses, such as being truant at school, not completing homework, not abiding by home curfews,
 20 etc. Such petitions ideally provide an authority figure outside the home to impose rules and consequences
 21 on students who are no longer or insufficiently responsive to parental rule-setting and discipline. *See* RCW
 13.32A.191 *et seq.*

attendance and assignments, and a curfew, then his schoolwork would fall into place. Tr. 85:3-15. Parents cited school issues to the Court as part of the grounds for their ARY petition, noting A.T.'s work refusal and failing grades. AR at 1832,1836,1840.

E. A.T.'s Academic and Functional Skills Continued to Deteriorate in the Tenth Grade, Yet ESD Did Not Offer Meaningful Intervention

1. School Performance Declined Steadily from The Beginning of Tenth Grade Through A.T.'s Long Term Suspension on January 25, 2015

During the first few days of A.T.'s tenth grade school year, the Father told MDHS counselor Nathan Howden about A.T.'s continuing behavioral issues over the summer, such as staying out all night and sleeping on park benches, and also about the ARY Petition. Tr. 171:1-8, 883:1-3.

Unfortunately, A.T.'s behaviors continued to deteriorate in tenth grade, with a correlating drop in academic performance. A.T. earned first semester grades of F in English, F in Int. Engineering Design, F in World History and a D in Geometry, for a semester GPA of .5 and a total of .5 credits earned out of 2.0 credits attempted. AR at 2380.

A.T. continued to elope at school. A.T. frequently absented himself from class, even when he went to school in the morning. Tr. 116:18-117, 442:12-443:2. He would not complete homework. Tr. 260:17-25. He disrupted classes when he was in school, to the point that ESD staff made comments about changing educational programming, albeit without following up. For example, A.T. was given a suspension for "continually messing with computers in lab, turning computers on and off, whipping headphone cables around," and continually touching other student's computers and bothering them. AR at 1864; 1871.

1 Dean of Students Grijalva wrote that he was “at a loss,” when it came to changing A.T.’s
 2 behaviors, that “discipline is ineffectual,” and that he was considering a shortened day, A.T.’s
 3 removal from certain classes, and increased supervision. AR at 1859.

4 ESD staff continued to fail to implement behavior interventions prescribed in A.T.’s
 5 IEPs and BIPs, and school staff continued to obstruct MDHS School Psychologist and
 6 Behavior Interventionist Sutton’s attempts to implement A.T.’s BIP. Tr. 826:17- 827:8; AR at
 7 1868. As had been the case in the ninth grade, tenth grade teaching staff did not recall receipt
 8 of A.T.’s BIP or complete IEP, receiving instead the very abbreviated and incomplete “IEP-
 9 At-A-Glance.” Tr. 419:12-18, 420:7-8; 425:12-426:4-25.

10 Disciplinary incidents accumulated in A.T.’s tenth grade year, culminating in a
 11 suspension in mid-January. On January 6, 2015, MDHS suspended A.T. for hiding in a stall
 12 of the girls’ bathroom for the third time that school year after leaving class. AR at 1881; Tr.
 13 350:1-22. MDHS held a manifestation meeting on January 13, 2015, and determined the
 14 behavior was not a manifestation of A.T.’s disability, AR at 1879-1885, 1889, though the
 15 School Psychologist in charge of the manifestation review, Ms. Sutton, testified repeatedly
 16 that she did not know why A.T. went into the girl’s bathroom and acknowledged that social
 17 issues were the root of his behavioral difficulties. Tr. 875:5-19. No one asked A.T. at the
 18 time why he had hidden in the girl’s restroom, but he reported to Dr. Cecchet long after the
 19 incident that a person wearing a hoodie with the hood zipped up in the front and completely
 20 covering the person’s neck and face instructed him to go into the restroom. Tr. 1003:14-
 21 1006:8. Dr. Cecchet cited this as a hallucination related to his prodromal schizophrenia,

1 along with seeing dogs in rooms that were not there, owls swooping down that other students
2 did not see, etc. AR 2077.

3 A.T. returned to school from his suspension for being in the girl's restroom on
4 January 21, 2015, and the very next day incurred an even longer, 45-day suspension. AR at
5 1950-1951. This time, A.T. refused to take his binder out of his backpack and headbutted
6 Dean Grijalva when he grabbed the backpack to investigate. *Id.* The backpack contained a
7 wrist rocket slingshot, thirty large ball bearings and a lighter. *Id.* MDHS then held a
8 manifestation meeting and again found the behavior not a manifestation of A.T.'s disability.
9 *Id.* However, School Psychologist Sutton, who was in charge of the manifestation review,
10 testified to uncertainty about A.T.'s disability and its relationship to his behavior. Tr. 881:11-
11 17, 878:11-15, 878:20-879:13. She also testified she had always suspected A.T. was on the
12 autism spectrum. Tr. 853:12-21. Significantly, A.T. was not diagnosed with autism spectrum
13 disorder and this disability had therefore not been considered in educational planning. *See*
14 AR 1557, 1637, 1727.

15 ESD generated a new BIP and IEP on the same date as the manifestation meeting, on
16 January 27, 2015. AR at 1896-1901, 1902-1942. However, Father testified the meeting,
17 which lasted thirty minutes, only involved a manifestation review concerning the disciplinary
18 infraction and suspension, with no discussion of an IEP or IEP services. AR at 1924; Tr.
19 123:9-10, 130:20-25. Sutton did not remember it being at an IEP meeting, Tr. 787:7-11, and
20 no other ESD employee testified to an IEP meeting occurring or to discussion of an IEP at the
21 January 27, 2015 meeting.

1 Despite A.T.s deteriorating school performance, ESD did not significantly change the
 2 educational programming in A.T.'s new IEP, dated January 27, 2015. The "Special
 3 Education and Related Services" pages in the new IEP and in the former January 29, 2014
 4 IEP are identical except for the dates the services are to be delivered. AR at 1800, 1934.
 5 Despite an earlier statement in the January 13, 2015 PWN (documenting the manifestation
 6 review arising out of the girls bathroom episode) that A.T. would receive 1:1 aide support and
 7 access to a behavior interventionist (ie, Ms. Sutton), AR 1950, the January 27, 2015 IEP did
 8 not include these services. *Id.* The behavior goals were changed slightly to purportedly
 9 improve disruptive and prosocial behavior, but no additional services were offered to help
 10 A.T. achieve these goals. Tr. 127:6-128:23; AR at 1796-1797, 1929-1930.

11 Dr. Stacy Cecchet, reviewed A.T.'s January 27, 2015 IEP, and testified that it was
 12 "wildly inappropriate" for A.T. given the level of his need at the time the IEP was offered.
 13 TR. 975-978:11. She testified to insufficient specialized instruction and accommodations, and
 14 that no day placement (as opposed to residential placement) would have been appropriate
 15 when the IEP was created. *Id.*

16 **2. Disability-Related School Refusal and Elopement from Home and School After** 17 **Student's January 2016 Long-Term Suspension**

18 After A.T.'s outburst with Dean Grijalva on January 22, 2015, ESD called the police.
 19 TR. 135:8-13, 122:24-25. A.T. was charged with Assault in the 4th Degree and was detained
 20 in Denny Youth Center ("Denny") until February 2, 2015. *Id.*; Tr. 356:14-16.
 21

1 For the period of the forty-five day suspension, ESD did not provide a Prior Written
2 Notice (PWN), IEP, or other written document describing any Interim Alternative
3 Educational Setting (IAES) or educational services A.T. would receive while suspended. Tr.
4 603:12; 607:1-608:2. ESD administrators subsequently assigned a tutor to instruct A.T. for
5 the minimal amount of special education minutes specified in his IEP (one hour and fifteen
6 minutes per week), albeit outside the IEP process. AR at 2488, Tr. 471:2-4; 484:20-24.
7 However, A.T. eloped from home after the first meeting with the tutor, and tutoring was
8 discontinued. AR at 2489; Tr. 474:14-15, 471:5-18, 472:11-14, 183:4-11. ESD staff
9 believed they were not obligated to provide instruction during suspension beyond the special
10 education minutes provided in the IEP, though many clearly believed A.T. needed more. AR
11 at 1997, 2007-2008. However, on March 9, 2016, ESD administrators, again outside the IEP
12 process, authorized ELearning for A.T. (independent study on a computer), despite A.T.'s
13 dismal behaviors and performance in past computer labs and difficulties with independent
14 study. A.T. never received ELearning. AR at 2014; 482:11-18.

15 After A.T.'s long-term suspension, A.T. spent a large amount of time at home with
16 nothing to do and minimal to no educational services from ESD. Tr. 318:10-17. The Parents,
17 probation officer Leah Price, and MDHS school psychologist Sutton expressed concern that
18 unstructured time without educational services would ultimately exacerbate A.T.'s behavioral
19 issues. AR at 2002.

20 This is precisely what happened. As the Father explained, the terms of the ARY
21 Order --- which included obeying home curfews, attending school, completing homework and

1 chores --- were incorporated as terms of A.T.'s probation once A.T. became involved with the
2 juvenile justice system. Tr. 109:1-112:23. After A.T.'s expulsion, A.T.'s behaviors at home
3 grew increasingly impulsive and aggressive, and he reacted with rage to Parents and ran away
4 from home, violating terms of his probation. This in turn resulted in detention at Denny
5 Juvenile Detention Center (Denny) from February 6-19, 2015 and February 25-March 3,
6 2015. D1-27; Tr. 127:22-139:3. A.T. again ran away from home from March 4-10, 2015, and
7 returned to Denny. Tr.139:4-140:1.

8 Between February 6-26, 2015, Probation Officer Leah Price repeatedly asked MDHS
9 psychologist Sutton to help the Parents in seeking a psychological evaluation for A.T, to no
10 avail. AR at 1998-1999. Therefore, Parents retained Dr. Stacy Cecchet themselves to assess
11 A.T. AR at 2029-2030. At a meeting between Parents and Dr. Cecchet on April 22, 2015,
12 she explained that A.T. needed residential placement. She told the Parents that if AT were
13 accepted at Children's Study and Treatment Center (CSTC), A Washington State in-patient
14 residential treatment center (CLIP), insurance and Medicaid might pay for the placement. Tr.
15 272:20 - 273:13-16. Dr. Cecchet's report became available to the Plaintiff and the Parents on
16 April 21, 2015. Tr. 144:18-25, Tr. 185:1-4.

17 Dr. Cecchet's report confirmed many preexisting diagnoses but added a new one:
18 prodromal schizophrenia. AR at 2077. Recommendations included special education, school
19 accommodations, and extensive related services (including clinical services from a licensed
20 clinical psychologist, a treatment team to create a treatment plan with a licensed psychologist,
21 medication management services, individual and family therapies, and behavioral training for

1 the Parents). AR at 2077- 2079. Cecchet recommended residential placement for the delivery
 2 of these services, *Id.*, testifying at hearing that “without residential care, A.T. would not be
 3 able to function in a school setting.” Tr. 1016:9-12. In a section called, “Hospitalization and
 4 Residential Treatment,” Cecchet noted “it may be necessary to hospitalize a young person if
 5 they are experiencing a crisis or their safety is at risk,” distinguishing this from her
 6 recommendation for residential placement through application to the Washington State CLIP
 7 program. AR 2079 *Id.*⁴

8 Dr. Cecchet testified that she recommended CSTC in her report and not a private
 9 residential school because finances were a limiting factor for the parents and CSTC accepts
 10 insurance and social benefits. RP 972:5- 972:16 (Cecchet).⁵

11 On April 29, 2016, ESD staff met to discuss various educational options for A.T.’s
 12 return to school, with Parents participating by phone. Despite divergent testimony, no one
 13 testified that a decision about the Student’s educational programming and placement was
 14 made at this meeting, or that an IEP or other formal written educational plan was submitted,
 15 discussed or generated, in draft or final form. Tr. 582:12-583:6; 587:1-20, 606:16; 299:20-

16 ⁴ A first episode of schizophrenia does not mean that schizophrenia is episodic with periods where
 17 psychosis disappears completely, as is the case with a manic episode in a person with bipolar disorder. Tr.
 18 937:2- 939:22 (Cecchet). With schizophrenia, a person never returns to baseline functioning after the first
 episode, even though there may be periods of exacerbation when hospitalization is required. *Id.*

19 ⁵ Dr. Cecchet is familiar with CSTC because she has worked there in the past. Tr. 927:5-927:16,
 1016:9-12. At CSTC students live in cottages on the campus and attend a full time school program run by
 20 the Clover Park School District, also within the campus. *Id.* Because CSTC’s program is a residential
 21 treatment center, the program is infused with behavior modification, medication management, and various
 therapies. *Id.* Therapies at CSTC include individual therapy, group therapy, family therapy, and milieu
 therapy. *Id.*

1 300:4; 265:5-16; 803:18-23;358:1-13; 301:11-23. Mother mentioned that A.T. wanted to
2 attend Scriber Lake High School (“Scriber”), an ESD alternative school, not MDHS, because
3 he was embarrassed about what had happened there and had a friend at Scriber. *Id.*; Tr.
4 1077:22-1079:17; AR at 2093.

5 ESD conducted a May 7, 2015 meeting, without Parents present, at which ESD staff
6 decided that A.T. would attend Scriber’s Student Transitional Education Program (“STEP”).
7 Tr. 489:3-13, 585:20-23, 555:3-7, 806:8-15; 489:19-22. No witness testified that Dr.
8 Cecchet’s evaluation was discussed at this meeting. A.R. 1-1103. ESD did not generate an
9 IEP for the Student at the May 7, 2015 meeting, but did generate a PWN stating A.T. would
10 attend the District’s alternative high school because of the need for more intensive instruction
11 and rejecting return to a comprehensive high school with a larger student population due to
12 Student’s very problematic activities. AR at 2104. The PWN did not mention residential
13 placement as an option considered. *Id.* While Plaintiff contends that Parents were invited to
14 the May 7th meeting, ALJ Mentzer found as a matter of (well-supported) fact that the Parents
15 did not receive a May 7, 2015 meeting invitation or PWN. Tr. 149:2-19; AR 1124-1125 at
16 ¶58.

17 ESD did not initiate a reevaluation of A.T. after receipt of Dr. Cecchet’s report, or
18 before issuing the May 7, 2015 PWN placing A.T. at Scriber’s STEP. AR 2104. ESD staff
19 explained at hearing that they did not initiate a reevaluation immediately because they needed
20 an opportunity to observe A.T. first in the Scriber environment. Tr. 632:2-12, 808:1-14.

1 Although ESD did not change A.T.'s January 27, 2015 IEP before assigning A.T. to
2 Scriber's STEP program, the assignment to Scriber changed A.T.s educational program in a
3 number of ways. MDHS is A.T.'s neighborhood school and a mainstream high school,
4 whereas Scriber's STEP program is a transitional program for kids who struggle to attend
5 school or make progress at school, Tr. 495:13-15. At Scriber STEP, all students attend a
6 partial school day, *Id.*, whereas the January 27, 2015 IEP and placement at MDHS called for
7 A.T. to attend a full school day. AR 1934. The STEP program consists of two staff
8 members—a special education teacher instructing students in one classroom, and a
9 paraeducator working with the same students doing individual study work in another
10 classroom. Tr. 512:20-2; A.T.'s January 27, 2015 IEP calls for general education classrooms
11 with typical peers the vast majority of the school day. AR 1924, 1934, 1935. Scriber is a
12 much smaller school: it has 275 students but only a 64 percent attendance rate so there are
13 about 170-180 students on campus each day. Tr. 519:20-24. A.T. was to have a 1:1 aide at
14 Scriber (or at least this was discussed by the group on May 7, 2015; it was not committed in
15 an IEP, PWN, or any other written document), whereas his January 27, 2015 IEP did not
16 provide one. Tr. 508: 15-20; AR 1931, 1935.

17 Dr. Cecchet found Scriber's STEP program inappropriate, as A.T. needs school
18 interventions in concert with medication management and therapeutic services. Tr. 987:16-
19 998:5. With respect to the part-time nature of the STEP program, Cecchet testified that even a
20 full-day school program would struggle to meet A.T.'s needs with the number of
21 interventions he needs and his need for opportunities to practice those interventions. *Id.*

Moreover, Cecchet was concerned with the amount of unstructured time A.T. would have in the program, and the socialization he would receive with students with delinquent and criminal behavior, or transient students, given his qualitatively different disability-related needs. *Id.* Moreover, ESD staff expressed ambivalence, uncertainty, and non- commitment when it came to Scriber STEP for A.T.. Christine Sutton equivocated about the appropriateness of Scriber for A.T, at best. Tr. 866:5-866:25. The remainder of ESD staff described Scriber STEP as a place where school staff could “get to know” and observe A.T. before creating specific educational programming for him. Tr. 586:11-24, 503-5-9; 556:1-557:23.

On May 18, 2015, the Father took A.T. to Scriber for his first day of school since his long-term suspension on January 22, 2015. A.T. attended Scriber that day, but refused to return to Scriber, or to any ESD school, after that date. Tr. 552:9, 547:17, 151:20-152:18, 186:7-12, 186:17-24; AT 1084:5-13. The Parents talked to MDHS staff about their unsuccessful attempts to get A.T. to attend school. Tr. 1081:12-17; 552:11-24, 533:14-534:6; AR at 2103-2104. Parents testified that they wanted help and never discouraged ESD staff from contacting them (despite ESD’s argument to the contrary). Tr. 1093:3-12, 1081:12-17.

F. A.T. Would Not Attend School After the End of Ninth Grade, Until His Parents Enrolled Him at Provo Canyon Residential School

Over the summer of 2015, A.T. continued to run away from home for longer and longer time periods. Tr. 187:12-18. There was only one other criminal offense committed after February of 2015, a shoplifting incident in September of 2015. Tr.142:23-13, 187:19-24.

1 Police took A.T. to Children's Hospital after apprehending him because there were orders to
2 take him there for a psychological evaluation if he was picked up. *Id.* Children's Hospital
3 staff recommended, "Residential treatment, mental health, substance use or dual diagnosis."
4 Tr. 187:25-188:25; AR 2156-2157.

5 A.T. would not attend school in the fall of his tenth-grade year (2015-2016), despite
6 Parents' efforts to get him to go. Tr. 154:8-14. No ESD staff testified to efforts to contact
7 A.T. or the family in the fall of 2015. *Id.* Scriber withdrew A.T. automatically on the fourth
8 day of the 2015-2016 school year as a matter of routine procedure. Tr. 14:1-8. The Mother
9 did not call ESD to discuss school refusal in the fall of 2015 because she had no new
10 information from the school district, and understood this to mean the ESD had done
11 everything they could. Tr. 1083:4-8.

12 The Parents understood that it takes a student about a year and a half to get into a
13 CLIP program, if he or she is accepted into one at all. Tr. 267: 3-5. The Parents submitted the
14 application to CLIP. Tr. 269:7-14 (Mother); P 134-7. Given the usual wait time, however,
15 the Mother began in August of 2015 making calls to investigate different residential treatment
16 centers, Tr. 267: 5-8, 292:24-25 (Mother). Provo accepted the Student but the Parents'
17 insurance would not cover the placement, stating that it was not for medical reasons; the
18 Parents nonetheless enrolled him there at their own expense. Tr. 277: 3-9.

19 Parents met with education counsel for the first time on November 30, 2015. Tr.
20 154:25. Subsequently, Parents gave written notice to ESD of their intent to place A.T. in a
21 residential school and seek reimbursement for all expenses related to the placement, on

1 December 1, 2015. Tr. 155:6-23; AR at 2168, 2333-2334. A.R. entered Provo on December
2 14, 2015. Tr.277:19.

3 **G. The Administrative Law Judge Correctly Found Provo Canyon an Appropriate**
4 **Placement for A.T.**

5 Provo is a therapeutic residential school in Utah that provides a comprehensive and
6 integrated educational, medication management, behavior intervention, and therapeutic
7 program. Provo provides individual therapy, group therapy, recreational therapy, medication
8 management, staff trained in behavioral medication techniques and a full time school staffed
9 largely by special education teachers.

10 All of Provo Canyon School's students have individual treatment teams that meet
11 at least once a month to review the student's progress for periods of time that may vary
12 but tend to be 15-20 minutes per student. AR 234. The treatment team consists of a
13 representative from the Medical department, the Student Life department, the Clinical
14 department and the Education department. *Id.*

15 At the treatment team meeting, staff from each department discuss how the student
16 is doing in his or her department, discuss his progress and needs, and brainstorm about
17 any needed changes in approaches and programming for the student. *Id.* When the
18 meeting is over, each representative takes recommendations and important information
19 from other departments back to staff in the respective department he or she comes from so
20 services are interdisciplinary and coordinated. *Id.*

1 Provo provides a fully endorsed, full time, year-round school on a trimester system,
2 serving middle and high school boys. AR at 2339. The school is an accredited special
3 education school by Northwest Accreditation. Tr. 720. All of the teachers are either
4 certificated in special education or in the process of taking courses to become certificated in
5 special education (there are 16 teachers total, with 3 working on their certification). Tr. 703:
6 5-9, 721:19-23. Students attend school from 8:45 am to 3:20 pm with eight periods. AR
7 2340. Class sizes are not bigger than 15, and A.T.'s classes range from 8-10 students. In
8 order to carefully monitor student progress in school and address any deficits in school
9 performance quickly, Provo Canyon provides constant grade checks and grades over
10 graduated levels every two weeks. AR at 2340.

11 Many of Provo School's students have behavior issues. AR at 2340, 2327, 2329.
12 Classrooms are small and very structured to encourage appropriate behaviors. *Id.* If a
13 student exhibits behaviors in class, they are first prompted within the classroom itself. *Id.*
14 If prompting does not stop the behavior, then the student may be asked to leave the
15 classroom. *Id.* There are at least three Student Life staff present in the school building at
16 all times so they are always available to process behavioral issues with a student who has
17 been removed from class until the student is ready to rejoin the class. *Id.* There are
18 additional Student Life staff present a phone call away on campus so educational staff can
19 summon as many as five additional Student Life staff to the school building if needed. *Id.*
20
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1 Even the more intensive therapeutic aspect of the program supports A.T. in his
2 education. If intervention outside the classroom by Student Life staff proves insufficient
3 to permit the student to reenter the classroom, the student goes to the Stabilization and
4 Assessment area where behavior is reviewed and the student is able to process behavioral
5 and emotional issues with a psychiatrist and therapist and work their way back to the
6 school area. AR at 2340-2341, 2327-2328 ¶6. While in the Stabilization and Assessment
7 area, students receive educational instruction from teachers who leave the school to go to
8 the Stabilization and Assessment area to teach their particular class that the student is
9 missing by not being at school. This keeps students from falling behind academically
10 while they are in the Stabilization and Assessment area. Instruction involves a high
11 teacher: student ratio in the Stabilization and Assessment area, often 1:1. *Id.*

12 A.T. participates in group and individual therapy. Students participate in therapy
13 groups from 3:20 pm to 4:00 pm, after school is over. AR 2340. Alex also participates in
14 one individual therapy session per week and one family session per week, with his parents
15 participating by phone. AR 2345. A.T.'s family and individual therapist is a masters
16 level clinician in Marriage and Family therapy. *Id.* AT's therapist testified to
17 improvement in group therapy, in the sense that A.T. had become more polite, more
18 attentive and more cooperative in groups. AR 2346. AT's Provo therapist testified that he
19 was moving through the emotional growth program at Provo, called the "Five Stages of
20
21

1 Change” curriculum, having reached completed Level 1 and most of Level 2 on a 5 level
2 program at the time of hearing, roughly five months after entry. *Id.*

3 At hearing, numerous witnesses testified about A.T.’s progress at Provo. A.T.’s
4 grades and school participation improved tremendously at Provo Canyon. In his first semester
5 he earned a B in Art Foundation 2, an A in Geometry, a B- in English, a B in U.S. History, an
6 A- in PE, and an A- in Physical Science. AR at 2427-2432. As noted, clinical staff testified
7 to emotional and behavioral improvement. A.T. reports to his Mother that he enjoys school;
8 writes to the Parents and sends copies of his report card and is excited to calculate his GPA;
9 and reports studying all night. In family counseling sessions, he states that he plays sports
10 with other students at the school, and is working on his social skills so he can have more
11 friends. Tr. 278:2-9 (Mother).

12 Dr. Cecchet is familiar with Provo Canyon School, and testified to its appropriateness
13 for A.T. Tr. 970:22 - 974:21. Dr. Cecchet visited the school on April 18, 2016, meeting with
14 the Director, touring the facility, meeting with the treatment team, and observing the Student.
15 *Id.* Dr. Cecchet compared Provo Canyon to CSTC. *Id.* Provo Canyon has a stronger
16 academic program and is preferable to CSTC in this respect. *Id.* At CSTC, the students work
17 in one classroom but at Provo Canyon there are multiple classrooms with more subjects
18 taught and extracurricular type activities. *Id.* Both programs have integrated individual
19 therapy, group therapy, family therapy, milieu therapy, behavior intervention, and psychiatric
20 services. *Id.*

1 **H. Cecchet's Testimony Regarding the Educational Implications of A.T.'s Disabilities**
 2 **and Educational Need for Residential Placement**

3 Psychologist Stacy Cecchet explained at hearing how A.T.'s educational needs are
 4 interwoven with his social, emotional, medical and behavioral needs such that he needs
 5 residential placement, and Plaintiff presented no testimony to the contrary. AR 1-1131.

6 According to Dr. Cecchet A.T.'s combination of ADHD, schizophrenia and
 7 attachment issues created a "perfect storm" for his truancy and other school issues. Tr.
 8 940:22-944:23.

9 Schizophrenia impacts cognitive organization. Tr. 934:1-25, 936:22-25. *Id.* If you
 10 are seeing things other people aren't seeing, hearing things other people aren't hearing, and
 11 thinking highly unusual thoughts, it is going to be very difficult to maintain an age
 12 appropriate focus on an academic setting, class participation, social participation, homework
 13 completion, etc. *Id.* If you are already cognitively disorganized from an unstable personality
 14 from early abuse and neglect, experiencing unusual sensory experiences and thoughts will
 15 only make the situation worse. *Id.* Student also has ADHD. *Id.* So essentially, he acts
 16 impulsively. *Id.*

17 Cecchet described how these conditions affect A.T.'s thought processes with respect to
 18 truancy and school elopement. Impulsivity from ADHD limits A.T.'s ability to inhibit poor
 19 choices like leaving home because he's mad or to engage in preferred activities. Tr. 942:7-
 20 944:23. Then, A.T. is on the street with transient individuals. Even if Student thinks, "it's
 21 getting late, I should go home," he may immediately think something else and lose focus on

1 getting home. *Id.* Or he may be so cognitively disorganized [from schizophrenia, childhood
2 abuse and neglect] that he really doesn't know how to get himself home. Neurotypical
3 individuals take for granted how easy it is to formulate and follow the sequential steps to get
4 home, but A.T. cannot do this. *Id.* And all these issues, and A.T.'s social issues, put him at
5 risk for not being able to make friends easily, and therefore "falling in with the wrong
6 crowd." Tr. 945: 5-21, 946:24 - 948:24. Dr. Cecchet opined that this very clearly happened
7 in the Student's case. He turned to spending time with a transient population living in parks
8 and on the streets. *Id.*

9 Dr. Cecchet recommended residential placement in her report due to "significantly
10 worsening dangerous behavior and elopement." Tr. 969:14-970. Cecchet testified to a
11 relationship between this and Student's educational needs. *Id.* The Student cannot participate
12 appropriately in the educational environment, complete homework, and attend class, nor can
13 he learn the social skills necessary to participate in a classroom environment, if he is
14 struggling so much with cognitive disorganization that he's truant and eloping for longer and
15 longer periods of time. *Id.* Dangerous behavior was also impacting Student's school
16 participation as the level of his aggressive behavior at school increased over time and
17 ultimately led to long term suspension. *Id.*

18 III. ARGUMENT

19 A. Standard of Review

20 In an appeal of a due process administrative decision brought under 20 USC
21 §1415(i)(2), the court must receive the record of the administrative proceedings, hear

1 additional evidence at the request of a party, and base its decision on the preponderance of the
 2 evidence. 20 USC §1415(i)(2)(B). The Supreme Court has held that “due weight” must be
 3 given to the administrative proceedings. *Bd. of Educ. v. Rowley*, 458 U.S. 176, 206 (1982).
 4 The court should afford deference where the ALJ’s findings are “thorough and careful,” *L.M.*
 5 *v. Capistrano Unified Sch. Dist.*, 556 F.3d 900, 908 (9th Cir. 2009), and the ALJ demonstrates
 6 “careful, impartial consideration of all the evidence and demonstrates his sensitivity to the
 7 complexity of the issues presented.” *Cnty. of San Diego v. Cal. Special Educ. Hearing Office*,
 8 93 F.3d 1458, 1466-67 (9th Cir. 1996).

9 **B. Statutory Framework of IDEA**

10 The Individuals with Disabilities Education Improvement Act ("IDEA") provides
 11 disabled students a right to a free and appropriate public education ("FAPE"). 20 USC §1400
 12 et seq., 34 CFR 300 *et. seq.*. The statute mandates, through a series of procedural regulations,
 13 an educational process designed to assure that a student received an appropriate education. 20
 14 USC §1414 - §1415. First, a statutorily prescribed "IEP team" conducts an evaluation that
 15 determines the educational needs of the child. 20 USC §1414 (a)-(c). The evaluation results
 16 form the basis for the IEP team's development of a written educational plan for the student,
 17 called an Individualized Education Plan (“IEP”). *Id.*, 1414(a)(1)(C)(I). The statute sets out
 18 precise educational processes for development of an IEP. 20 USC §1414(d). The IEP is the
 19 "primary vehicle" for implementing the underlying goals of the statute. *Honig v. Doe*, 484
 20 U.S. 305, 311, 108 S. Ct. 592, 597 (1988). It is the IEP that sets forth the student's current
 21 educational performance, articulates a set of annual goals and short-term objectives in

1 furtherance of those goals, and identifies the special education and other services necessary to
 2 help the student achieve those goals. *Honig*, 484 U.S. at 311, 108 S. Ct. at 597-98, 20 USC
 3 §1414(d)(1)(A)(i).

4 IDEA also provides parents of disabled students a right to participate in the
 5 educational process the statute mandates. 20 USC §1415(f)(3)(E)(ii)(II). In addition to
 6 procedural regulations designed to assure an appropriate education to students with
 7 disabilities, IDEA includes procedural regulations intended to assure parental participation in
 8 the educational process, including for example that parents be part of the evaluation team, the
 9 IEP team, and that they receive Prior Written Notice when a school district acts or fails to act
 10 with respect to the delivery of FAPE to a student. 20 USC 1414, 1415 (e.g. § 1415(b)(1) and
 11 (3), (d)(1)(A), (f) and §1414(a)(1)(D), (b)(1), (b)(4)(A) and (B), (c)(3), (d)(1)(B)(i).

12 A school district violates IDEA if it fails to provide a substantive free and appropriate
 13 public education to a student. To meet its substantive obligation under the IDEA, a school
 14 must offer an IEP “reasonably calculated to enable a child to make progress appropriate in
 15 light of the child’s circumstances.” *Endrew F. v. Douglas County Sch. Dist.*, 580 U.S. ____
 16 (2017).

17 A school district also violates IDEA if it fails to follow one or more procedural
 18 regulations and that failure has a substantive impact. There is a substantive impact if the
 19 procedural violation impedes the student's receipt of a free and appropriate public education,
 20 results in a deprivation of educational benefit to the student, or significantly excludes the
 21 parents from the educational process. §1415(f)(3)(E)(ii)(I) - (III).

1 The Supreme Court set forth a two-pronged test for reimbursement for a unilateral
 2 private placement in *Florence County School District Four v. Carter*, 510 U.S. 7 (1993).
 3 First, a federal court must conclude that the public school placement violated the IDEA,
 4 essentially determining that a substantive denial of FAPE occurred. Second, the court must
 5 determine that the private placement Parents seek as a remedy is proper under the IDEA. *Id.*

6 **C. A.T.’s Placement at Provo Canyon Served Educational Needs Indivisible from and**
 7 **Intertwined with Behavioral, Social and Medical Needs**

8 **1. The Legal Standard for Residential Placement**

9 The Ninth Circuit standard for school district placement of a disabled child in a
 10 residential school focuses on whether the placement is necessary in order to meet the
 11 student’s educational needs, or whether the placement is a response to medical, social, or
 12 emotional problems “quite apart from the learning process.” *Ashland School Dist. v. Parents*
 13 *of Student R.J.*, 588 F.3d 1004, 1010 (9th Cir. 2009), *citing Clovis Unified Sch. Dist. v.*
 14 *California Office of Administrative Hearings*, 903 F.2d 635, 643 (9th Cir. 1990). *See also* 34
 15 CFR §300.104.

16 Requiring residential placement for some students is consistent with IDEA’s statutory
 17 requirement that special education students receive “related services... as may be required to
 18 assist a child with a disability to benefit from special education.” 20 USC §1401(26)(a). *See*

1 *also* 34 CFR § 330.17 (“free appropriate public education means special education and
 2 related services ...). The term “related services” includes a wide array of supportive services.⁶
 3 A residential placement consists essentially of special education supported by an extensive
 4 and integrated package of related services, typically including individual counseling, group
 5 counseling, recreational therapy, room and board, and 24/7 behavioral counseling.

6 In assessing whether a placement, including a residential placement, is necessary to
 7 meet a student’s educational needs under the IDEA, it should be noted that the IDEA does not
 8 solely consider a student’s academic achievement; indeed, the definition of “educational
 9 needs” under IDEA includes “academic” *and* “functional” needs. 34 CFR §300.320(a)(1)
 10 and (6)(i); 300.324(a)(4). *See also E.R.K. v. State Dep’t of Education*, 728 F.3d 982, 990 (9th
 11 Cir. 2013); In *Seattle Sch. Dist.v. B.S.*, 82 F.3d 1493, 1500 (1996)(“term ‘unique educational
 12 needs’ shall be broadly construed to include the handicapped child’s academic, social, health,
 13 emotional, communicative, physical and vocational needs.”).

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 17 ⁶ Related services include [T]ransportation, and such developmental, corrective, and other
 18 supportive services (including speech-language pathology and audiology services, interpreting services,
 19 psychological services, physical and occupational therapy, recreation, including therapeutic recreation,
 20 social work services, school nurse services designed to enable a child with a disability to receive a free
 21 appropriate public education as described in the individualized education program of the child, counseling
 services, including rehabilitation counseling, orientation and mobility services, and medical services, except
 that such medical services shall be for diagnostic and evaluation purposes only) as may be required to assist
 a child with a disability to benefit from special education, and includes the early identification and
 assessment of disabling conditions in children. *Id.*

1 **2. The Administrative Court Followed Ninth Circuit Precedent in Awarding**
 2 **Residential Placement**

3 Plaintiff relies on the Ninth Circuit's decisions in *Ashland School District v. Parents*
 4 *of Student E.H.*, and *Ashland School District v. Parents of Student R.J.* ("E.H." and "R.J.")
 5 for the proposition that A.T.'s issues manifested off school grounds, were medical in nature,
 6 and thus were separate and apart from the educational process. Both cases are
 7 distinguishable from the case at bar, and thus the ALJ did not err in her application of them.

8 Plaintiff, on the other hand, implicitly urges this Court to adopt an incorrect legal
 9 standard, namely that a medical diagnosis requiring mental health treatment *ipso facto* renders
 10 a residential placement non-educational. Plaintiff argues that A.T. needed Provo Canyon
 11 solely for medical reasons because (1) psychologist Stacy Cecchet testified that while
 12 Student's behavior may have been impulsive at first it became more congruent with the other
 13 mental health symptoms of schizophrenia; (2) a doctor at Children's Hospital in Seattle also
 14 recommended residential treatment for mental health reasons; (3) Dr. Cecchet initially
 15 recommended a residential placement (CSTC) providing intensive inpatient treatment.
 16 *Plaintiff Edmonds School District's Motion for Summary Judgment* (Pff. Motion) at 21-22.
 17 In urging this Court to reverse the administrative court on these grounds the Plaintiff
 18 disregards entirely IDEA's fundamental requirement that school districts provide educational
 19 services to address mental health and medical needs that have a detrimental impact on a
 20 student's education. *See* 34 CFR §300.8.

Far from placing A.T. outside the realm of IDEA's protection, schizophrenia is explicitly included within the definition of Emotional Disturbance, one of the eligibility categories of IDEA. 34 CFR § 300.8(c)(4)(ii). While a student's schizophrenia must also detrimentally impact him educationally to trigger IDEA eligibility, the District repeatedly concedes that A.T.'s schizophrenia did exactly this. ("the student performed well academically prior to the onset of his prodromal schizophrenia", *Pff. Motion* at 20:8; "the Student's progress from year to year and his high academic capability when he is mentally stable demonstrates what when medical issues are not a factor, he can and does benefit from the educational services and the general education setting at the District." *Id.* at 27:4-9)

Cutting to crux of the matter, the administrative court correctly observed:

The District cannot insulate itself from the medical problems of its students. If those medical problems prevent the students from benefitting from an education without certain services in the educational setting, then the District must provide those services. The District's argument... is akin to a district arguing that it should not have to fund a nurse to serve a medically fragile student who needs a nurse in class in order to attend school. If medical issues were not a factor, that student could easily benefit from the educational services the District offers.... Similarly, if psychiatric issues were not a factor, the Student here easily has the intellectual ability to benefit from the District's placement. Sadly, students cannot be separate from their disabilities. The District must take students as it finds them, and provide the related service of nursing (for the medically fragile student) and the environment of a residential placement (for the Student here). Because if these services are not provided, neither of these students will receive any benefit from their education.

AR 1138 at ¶9.

1 The fact that Dr. Cecchet initially recommended placement at a CLIP facility, CSTC,
2 likewise does not render Provo a non-educational, medical placement for two reasons: (1)
3 Provo is not a medical placement under the standards set forth in *Clovis*, the Ninth Circuit
4 seminal case distinguishing medical and non-medical placements; and (2) Dr. Cecchet's
5 testimony clearly identifies features associated with a non-medical placement under *Clovis* as
6 features needed by the Student, specifically distinguishing in her report the recommendation
7 for periodic hospitalization to address an acute crisis from A.T.'s longer term need for
8 residential treatment.

9 In *Clovis*, the parents placed the student in an "acute care psychiatric hospital" called
10 Kings View Hospital and sought reimbursement from their school district for the costs of the
11 placement, characterizing it as a residential placement under IDEA. 903 F.2d at 639. The
12 school district "agree[d] that a residential placement of some kind [was] necessary" and
13 agreed that "a highly structured and integrated program of regularly scheduled psychological
14 services, including psychotherapy, [was] needed for [the student] to benefit from any
15 educational program." *Id. at 641*. However, the school district asserted that it was not
16 required to pay for a "psychiatric hospitalization because that type of placement is a response
17 to a medical rather than an educational need and is not the type of residential program
18 contemplated under the Act." *Id.*

19 The Ninth Circuit agreed, and in doing so set forth criteria distinguishing a medical
20 from an educational placement: (1) whether the hospitalization occurs because of an "acute"
21 psychiatric crisis *Id. at 645*; (2) receipt of minimal hours of classroom instruction a day (two

1 hours per day in *Clovis*) *Id* at 646.; (3) whether the amount of time spent in the classroom is
 2 determined by hospital staff and is dependent upon non-academic treatment needs, *Id.* at 645;
 3 (4) whether the student’s overall program is designed by a medical team, *Id.*; (5) whether a
 4 student receives high amounts of psychotherapy, suggesting services are “medical” insofar as
 5 they address a “medical crisis” (six hours per day of intensive psychotherapy in *Clovis*), *Id.*;
 6 (6) whether the placement is under the jurisdiction of a government body concerned with
 7 health services (the hospital in *Clovis* was under the State Department of Health Services) *Id.*
 8 at 646; (7) whether the placement in included as an educational option for handicapped
 9 students by the state (the hospital in *Clovis* was not). *Id.*; (8) whether educational services are
 10 provided by the institution itself or the local school district. *Id.* at 646.

11 Under *Clovis*, Provo is an educational, not a medical, placement. Provo is accredited
 12 as a school. Parents’ insurance refused to pay for Provo because it did not meet the medical
 13 necessity standard. A.T. was not placed there for a temporary, acute medical crisis, but based
 14 upon two years of constant regression in academic and functional performance. A.T. attends
 15 school at Provo for a standard school day, five days a week. He attends a moderate amount
 16 of group therapy in the afternoons when school is over, with an additional session of
 17 individual therapy and family therapy a week. A.T.’s program at Provo is designed by an
 18 interdisciplinary treatment team consisting of medical staff, counselors, teachers, and
 19 dormitory (“student life”) staff.

20 Moreover, Dr. Cecchet’s recommendation of CSTC did not imply a belief that A.T.’s
 21 medical needs were separable from his educational needs. In her report recommendations,

1 Dr. Cecchet distinguished the need for “hospitalizations” should A.T. be experiencing a
 2 “crisis” from enrollment at CLIP/CSTC due to “significant worsening behavior and
 3 elopement.” She testified to the interwoven relationship between Student’s “significant
 4 worsening behavior and elopement” and his disabilities and educational needs. Dr. Cecchet
 5 testified that she recommended CSTC instead of a private residential school not because it
 6 was “medical” in nature but because finances were a limiting factor for the Parents and CSTC
 7 accepted insurance and social benefits. Dr. Cecchet’s testimony emphasized the similarities
 8 between CSTC and Provo in non-medical services: both programs have full time school
 9 services; students live together in dorms at Provo and cottages at CSTC; both programs
 10 provide individual therapy, group therapy, family therapy, milieu therapy, behavior
 11 intervention services and psychiatric services. Ultimately, Dr. Cecchet expressed a
 12 preference for Provo because of its stronger academic program.

13 The sole Ninth Circuit case Plaintiff cites to suggest Provo serves exclusively medical
 14 purposes is *E.H.*, but *E.H.* bears little factual resemblance to our own case. 587 F.3d 1175
 15 (9th Cir. 2009). In *E.H.*, the student maintained good grades, and there is no reference to
 16 pronounced behavioral problems at school. *Id.* at 1179. However, the student suffered from
 17 depression and repeatedly attempted or imagined suicide, resulting in short term
 18 hospitalizations. *Id.* After a hospitalization in December of ninth grade for suicidal tendencies
 19 and threatening to hurt family members, the parents enrolled the student in Youthcare, a
 20 residential facility. *Id.* The parents did not provide reimbursement notification or even
 21 oppose the student’s IEPs before enrolling the student at Youthcare, leaving school personnel

1 with the impression that the student would be entering residential school to address emotional
 2 and not scholastic issues. *Id.* at 1179, 1185. Moreover, the parents' caseworker testified that
 3 parents reported they were seeking residential placement because of issues at home, not
 4 school. *Id.* at 1185. Once at Youthcare, the student was unable to complete much schoolwork
 5 for the first six months because of emotional issues. *E.H. Id.* at 1185.

6 *A.T.* on the other hand exhibited behavioral difficulties from preschool and ---
 7 beginning with the onset of prodromal schizophrenia in the ninth grade --- failed classes,
 8 disrupted classes, refused to do school work, left classes without permission, wandered the
 9 halls, did bizarre things such as hiding in the girl's restroom, and ultimately was suspended
 10 for 45 days for bring a wrist rocket and ball bearings to class, after which he refused to attend
 11 school at all.

12 A Ninth Circuit residential placement case far closer factually to our own is *Seattle*
 13 *Sch. Dist. v. B.S.*, 82 F.3d 1493 (9th Cir. 1996), in which the court affirmed residential
 14 placement at Intermountain for a student adopted from an abuse and neglect background
 15 whose behaviors disrupted and impeded her ability to function at school, despite her ability to
 16 perform well on standardized tests because of high intelligence. In *Seattle Sch. Dist. v. B.S.*,
 17 the Ninth Circuit noted:

18 Finally, the School District asserts that it should not be responsible
 19 for the costs of Intermountain because Intermountain is essentially
 20 a "medical" rather than an "educational" program. To the contrary,
 21 Intermountain is an accredited educational institution under state
 law. Witnesses testified that it is not a psychiatric hospital and is
 not based on a "medical model." That A.S.'s disability, like most
 disabilities under the IDEA, stems from medical or psychiatric

1 disorders, and that Intermountain's program addresses these
2 disorders in an attempt to ensure that A.S. is able to benefit from
3 her education, does not render the program invalid or remove the
4 District's financial responsibility.

5 *Id. at 1402.*

6 Plaintiff's assertion that behaviors and adaptive functioning at home, and not
7 academic and functional performance at school, necessitated residential placement at Provo is
8 likewise not supported by the record in this case. AR 1-1103.

9 Plaintiff cites one Ninth Circuit case in support of this position, *R.J.*, but the facts of
10 *R.J.* are easily distinguished from our own case. *R.J.* involved a student with ADHD who had
11 also been diagnosed with adjustment disorder because of the anger she felt about her parent's
12 divorce and conflicts with her boyfriend. 588 F.3d at 1006. She began self-harming and
13 parents decided to keep her at home. *Id.* When she was back at school, she began sneaking
14 out to see males and had a relationship with an adult male. *Id.* She had begun to make
15 progress at school and with her work completion, and earned good grades. *Id.* at 1006-1007.
16 She was not disruptive in school, only at home. *Id.* at 1010. However, her parents expressed
17 concerns at an IEP meeting about *R.J.*'s defiant behavior at home and her relationships with
18 men, and then enrolled her in a residential school without providing reimbursement
19 notification to the school district. *Id.* at 1007.

20 Unlike the student in *R.J.*, A.T. is not a student who was acting out and defiant solely
21 at home but otherwise a passable student—he had long-standing issues at school. His parents
did not seek out residential treatment solely to prevent him from having inappropriate

1 relationships. In addition, at school, A.T.'s IEPs and BIPs always reflected a need for
2 behavioral and social intervention at school, not just at home.

3 In relying exclusively on *R.J.* and *E.H.*, the Plaintiff disregards other Ninth Circuit
4 cases that are factually similar to A.T.'s, where reimbursement for residential placement was
5 found appropriate and where the student's academic, behavioral, social, functional and
6 medical needs were similarly intertwined: *Seattle Sch. Dist. v. B.S.*, 82 F.3d 1493 (9th Cir.
7 1996) (Student with pre-adoption history of neglect, physical and sexual abuse, and
8 abandonment; diagnosed with attachment disorder, conduct disorder, ODD and histrionic
9 personality; high intelligence and high scores on achievement tests; significant behavioral
10 issues at school, unsuccessful special education placement and expulsion); *Taylor v. Honig*,
11 910 F.2d 627 (9th Cir. 1990) (affirming lower court award of residential placement based in
12 part on need to address truancy, where school district failed to offer an appropriate program
13 and student repeated periods of juvenile detention); *Capistrano Unified Sch. Dist.*, 59 F.3d
14 884 (9th Cir. 1995) (Student with history of febrile seizures causing hyperactivity, learning
15 and behavioral difficulties, hospitalized based on aggression in the home; doctors
16 recommended a highly structured day placement or residential placement; student failed in
17 various special education placements at school; immediately prior to parents' unilateral
18 placement in a residential program the school reduced special education services).

19 Moreover, only one current formal evaluation of A.T. existed in this case at the time
20 of hearing, and the evaluator, Dr. Cecchet, testified extensively about the combined effects of
21 schizophrenia, ADHD, and childhood abuse and neglect on A.T.'s ability to self-regulate and

1 organize behavior, make choices, seek out relationships, attend school and complete work.
2 She carefully explained why A.T. needed residential placement to address those needs.
3 Despite ample notice that A.T.'s needs changed in January of 2015, the ESD last evaluated
4 this student in 2013. No current evaluation or evaluator for ESD made any different
5 recommendations for placement than Cecchet, during the educational process or at the
6 administrative hearing. In fact, ESD witnesses testified to uncertainty about the nature of
7 A.T.'s needs at hearing. None took issue with Cecchet's evaluation, and in fact staff referred
8 to the evaluation as illuminating, and Dr. Cartwright testified that she agreed with it. As
9 such, Cecchet's recommendations for residential placement to address educational needs, her
10 opinion that Provo Canyon is an appropriate educational placement, as well as her diagnoses
11 and testimony concerning the relationship between the student's disability and educational
12 needs are entitled to some deference.

13 **D. The Placement at Provo Canyon is Proper under the IDEA**

14 The U.S. Supreme Court set forth a two-pronged test for reimbursement for a
15 unilateral private placement in *Florence County School District Four v. Carter*, 510 U.S. 7
16 (1993). Under the second prong, the *Carter* court held that a private school placement could
17 be found proper under the IDEA even if it did not provide the student with all of the
18 necessary educational benefits. *Id.* at 15-16.

19 Plaintiff argues that the placement at Provo Canyon is not proper under the IDEA
20 because it did not implement A.T.'s last IEP (which is not a requirement), and did not place
21 him in advanced classes. However, under the Ninth Circuit standard, the private placement

1 need not furnish every service necessary to maximize the student's potential. There need only
 2 be a showing that the placement provides educational instruction specially designed to meet
 3 the unique needs of a disabled student, supported by such services as are necessary to permit
 4 the student to benefit from instruction. *C.B. ex rel. Baquerizo v. Garden Grove Unified Sch.*
 5 *Dist.* 635 F.3d 1155, 1159 (9th Cir. 2011); *Union Sch. Dist. v. Smith*, 15 F. 3d, 1519 1526 (9th
 6 Cir. 1994) (parents' unilateral residential placement need not satisfy state educational
 7 standards for reimbursement to be ordered).

8 Plaintiff also argues that the parental placement at Provo is not proper because it is not
 9 the least restrictive environment. This is not a requirement for unilateral private placement in
 10 the Ninth Circuit. *Seattle v. B.S.*, 82 F.3d at 1501-1502. In any event, the record
 11 demonstrates that A.T. was not and could not have been appropriately educated in less
 12 restrictive ESD placements.

13 **E. ESD's Proposed Program is Not Appropriate and Did Not Constitute FAPE in The**
 14 **Least Restrictive Environment**

15 Plaintiff relies on a case from an Oregon district court rejecting a placement at Provo,
 16 which is factually distinguishable from ours yet helps to frame the issue and highlight the
 17 differences between the inappropriate placements ESD proposed for A.T. and the appropriate
 18 placement at Provo.

19 In *G.R. ex rel. Russell v. Dallas Sch. Dist. No. 2*, 823 F. Supp.2d 1120 (D. Or. 2011),
 20 the court contemplated a residential placement for a student with a learning disability who
 21 brought a knife to school and was convicted of sexual assault. In that case, the school district

1 provided a program, “New Options,” for the student that was highly structured with a small
2 class size, close supervision, daily tracking, behavioral supports, and individual and group
3 therapy. *Id.* at 1142. New Options would have given that student the ability to practice
4 needed appropriate social behavior with girls his own age, addressing his behavioral issue
5 directly (which Provo Canyon could not provide as an all-boys school). *Id.* The student’s
6 juvenile probation officer testified that he could have successfully attended the school
7 district’s program and gone to outpatient treatment. *Id.* at 1139. Since the court found that
8 the student could have received a FAPE while attending New Options at the district, then the
9 placement at Provo Canyon was found not necessary to provide special education and related
10 services. *Id.*

11 Scriber’s STEP program is inappropriate at a number of different levels. First, the
12 “offering” of Scriber is replete with procedural errors that denied FAPE by excluding the
13 Parents from the educational process; hence regardless of the substantive appropriateness of
14 Scriber STEP, the first prong of the two part test the Parents must meet to obtain the relief
15 they seek is met. These procedural errors included ESD’s failure to include the Parents at the
16 May 7, 2015 IEP meeting where the team decided to place A.T. at Scriber, and its failure to
17 generate an IEP (as opposed to a PWN) describing educational programming the Student
18 would receive. When a school district excludes parents from an IEP meeting in which an IEP
19 is generated, it denies FAPE by excluding the parents from the educational process, and a
20 court must resolve the first prong in favor of the parent regardless of the appropriateness of
21 the IEP designed. *W.G. v. Target Range Sch. Dist.*, 960 F.2d 1479, 1484, 1485 (9th Cir 1992),

1 superseded by statute on other grounds, as recognized in *R.B. v. Napa Valley Sch. Dist.*, 496
 2 F.3d 932 (9th Cir. 2007) (failing to include Parents in IEP meeting significantly excluded
 3 them from educational process, denying FAPE, and thus there was no need to determine if
 4 IEP was reasonably calculated to provide educational benefit before awarding private school).
 5 Similarly, when a school district determines a school placement (like Scriber) without first
 6 determining the educational programming needed in an IEP, it excludes the parents from the
 7 educational process by predetermining placement. *W.G.* 960 F.2d at 1484; *Spielberg v.*
 8 *Henrico Cnty. Pub. Schs.*, 853 F.2nd 256, 258-59 (4th Cir. 1988).

9 However, quite apart from the exclusion of the Parents from the educational process,
 10 ESD denied FAPE because Scriber STEP was not appropriate for the Student. Dr. Cecchet
 11 testified to its inappropriateness, and even ESD testified they wanted to take more time to
 12 investigate whether Scriber would work for A.T. before offering a more specific program for
 13 him. There is no indication that A.T. could have successfully attended Scriber STEP, and in
 14 fact he refused to attend after just one day spent there. This is consistent with expert
 15 testimony that A.T. could not have been successfully instructed in less restrictive placements,
 16 such as public school with outpatient treatment, or a day placement.

17 **F. ESD's Failure to Provide a FAPE to A.T. Was Not Cured by A.T.'s Disability-**
 18 **Related Elopement and Detentions**

19 Plaintiff relies on a Tenth Circuit decision to support its argument that any violations
 20 of the IDEA that ESD may have committed would be ameliorated by A.T.'s truancy. *Garcia*
 21 *v. Bd. of Educ. of Albuquerque Pub. Sch.*, 520 F.3d 1116, 1126 (10th Cir. 2008). However, the

1 Ninth Circuit decision in *Taylor v. Honig* has precedential effect and has direct bearing on the
2 case at hand. 910 F.2d 627 (9th Cir. 1990). *Taylor* also presented an adolescent with serious
3 emotional disturbance, who was arrested for assaulting a family member, and also spent
4 periods in both detention facilities and children's psychiatric hospitals. At no time did the
5 court find, as in *Garcia*, that the periods of absence from school absolved the school from its
6 responsibility to develop an IEP and appropriate placement for the student. The court upheld
7 the hearing officer's order of a 24-hour residential facility that would provide, *inter alia*, "an
8 on-site school program to forestall truancy." *Taylor v. Honig*, 910 F.2d at 630.

9 The Administrative Law Judge, who heard the testimony at hearing, found that "Dr.
10 Cecchet persuasively explained why the Student's truancy was causally related to his
11 disabilities" and "the District offered no evidence to the contrary." A.R. 1139. IDEA only
12 excludes social maladjustment from disability eligibility if the social maladjustment is not
13 related to emotional disturbance otherwise covered by the Act. 34 CFR §300.8(c)(4)(ii).
14 School districts cannot shirk their duty to provide appropriate programming and placement to
15 students who manifest disability-related truancy, including residential placement. *See Taylor*
16 *v. Honig, supra*; *M.M. v. New York City Dept. of Educ.*, 26 F. Supp. 3d 249 (SDNY 2014);
17 *Lexington County Sch. Dist. One. V. Frazier*, 2011 US Dist. LEXIS 107813, 111 LRP 62693
18 (DSC 2011).

19 Moreover, the record is well-developed that while A.T. was attending school in the
20 ninth and tenth grades, ESD did not consistently implement his IEPs or BIPs, removed
21 behavioral intervention services, and did not change or add services as A.T.'s school

1 functioning deteriorated. A.T.'s truancy issues were profoundly exacerbated by ESD's failure
 2 to provide the structured environment, behavior, counseling, executive functioning and social
 3 support that his evaluations, IEPs and BIPs all identified he needed. Plaintiff should not be
 4 permitted to excuse its failure to deliver FAPE on the Student's absence from school when
 5 the Student's absence from school was in large part caused by Plaintiff's failure to deliver
 6 FAPE at an earlier point when the Student was in school.

7 **G. The ALJ's Findings of Procedural Violations by the ESD are Well-Supported by the**
 8 **Record**

9 **1. ESD Denied A.T. a FAPE by Failing to Provide an Appropriate IAES**
 10 **Following his Long-Term Suspension**

11 The federal regulations implementing the IDEA require that when a disciplinary removal
 12 of a student with a disability from his or her current placement occurs, that student must
 13 continue to receive educational services, "so as to enable the child to continue to participate
 14 in the general education curriculum, although in another setting, and to progress toward
 15 meeting the goals set out in the child's IEP." 34 CFR §300.350(d)(1).(emphasis added) The
 16 student must also receive, as appropriate, a functional behavioral assessment, and behavioral
 17 intervention services and modifications, that are designed to address the behavior violation so
 18 that it does not recur. *Id.*

19 Assuming *arguendo* that A.T.'s conduct was not a manifestation of his disability, the
 20 ESD was still required to provide A.T. with an Interim Alternative Educational Setting
 21 (IAES), and 75 minutes per week instruction on IEP goals was woefully inadequate to enable
 A.T. to participate in the general education curriculum ---- according not only to the Parents'

1 witness, psychologist Stacy Cecchet, but also according to the school psychologist intimately
 2 involved with the Student's education, Christine Sutton (as evidenced in her emails in
 3 evidence).

4 As correctly noted by ALJ Mentzer, a student's IEP team must decide both the setting
 5 and the services for the IAES: the interim alternative educational setting....shall be
 6 determined by the IEP team." See WAC 392-172A-05150; 34 CFR §300.531; *Admin. Order*
 7 at ¶27-28. The ALJ correctly found these decisions were made unilaterally by ESD
 8 administrators, not by the IEP team, thus excluding the Parents from the educational process.

9 **2. The Plaintiff's Failure to Evaluate A.T. Denied Him FAPE**

10 School district are required to reevaluate students whenever "the educational or
 11 related service needs... of the child warrant a reevaluation." 34 CFR 300.303(a). A.T.'s
 12 most recent reevaluation by ESD at the time of hearing occurred in February of 2013, during
 13 his eighth grade year. During A.T.'s ninth, tenth and eleventh grades, his behaviors
 14 precipitously increased and his academic performance plummeted. This triggered the
 15 obligation to reevaluate: a reevaluation is a formal process under IDEA to determine the
 16 nature of a student's educational needs so that appropriate educational programming and
 17 placement can be offered.

18 Moreover, ESD staff should have initiated a reevaluation based on their suspicion
 19 that A.T. experienced Autism Spectrum Disorder. School districts "shall ensure that ... the
 20 child is assessed in all areas of suspected disability." 20 USC § 1414(b)(3)(B). This
 21 obligation to evaluate includes "medical services... for diagnostic and evaluation

1 purposes.” 20 USC §1401(26)(A); 34 CFR§ 300.34.

2 School Psychologist Christine Sutton suspected A.T. experienced autism, but did not
3 tell the Parents this or initiate a reevaluation. School districts are responsible for initiating
4 evaluations, including medical evaluations, when they suspect an undiagnosed disabling
5 condition. *See also N.B. v. Hellgate Elem. Sch. Dist.*, 541 F.3d 1202, 1209 (9th Cir. 2008)
6 (school district denied FAPE in telling parents who disclosed a medical diagnosis of autism
7 that they should obtain a general evaluation from a child development center); *Union Sch.*
8 *Dist. v. Smith*, 15 F.3d 1519, 1523 (9th Cir. 1994) (parents failure to secure an evaluation,
9 even if the parents agreed to obtain it, does not excuse the school district's obligation under
10 the IDEA to secure such an evaluation); *Dept. of Educ. State of Hawaii v. Cari Rae S*, 158
11 F. Supp.2d at 1198 (DC Hi 2001) (school district must reimburse parents for costs of a
12 hospitalization necessary for proper evaluation of the student's disability); *MJC By Martin v.*
13 *Special Sch. Dist. No. 1*, 58 IDELR 288 (DC Minn 2012) (district must secure a medical
14 evaluation by a licensed physician if such an evaluation is necessary to determine student's
15 IDEA eligibility); *Letter to Anonymous*, 34 IDELR 35 (OSEP 2000)(where physician's
16 examination necessary to establish ADHD to determine IDEA eligibility, must be at no cost
17 to parents).

18 The District cannot excuse its failure to evaluate on the fact that A.T. exhibited
19 school refusal and was therefore “unavailable” to evaluate. As part of any reevaluation
20 under IDEA, a district must initially determine the data available and the data needed. 34
21 CFR 300.305(a). School districts are permitted to evaluate a student by review of existing

1 information alone without additional testing or observation of the Student, 34 CFR §
2 300.305(d), and in this case the ALJ found, correctly, that the District had “extensive and
3 recent assessments, both formal and informal from which to conduct its reevaluation.” AR
4 1148 at ¶ 49. Plaintiff had at its disposal the comprehensive formal evaluation of Dr.
5 Cecchet as well as available information about A.T. from school psychologist Christine
6 Sutton and MDHS teacher observations and reports. *Id.* Second, a student may be evaluated
7 in-patient at a hospital, mitigating the risk of elopement. *Cari Rae S*, 158 F. Supp.2d 1190,
8 1198 (DC Hi 2001).

9 The District was obligated to reevaluate the Student after receipt of Dr. Cecchet’s
10 report diagnosing A.T. with prodromal schizophrenia. The requirement to reevaluate may
11 be triggered by the report of outside experts. *See N.B. v. Hellgate Elementary School*
12 *District*, 541 F.3d 1202, 1209 (9th Cir. 2008) (school district failed to evaluate student after
13 speech and language pathologist report provided by the parents identified an "autistic
14 component" interfering with child's education). Yet no one at ESD initiated a reevaluation
15 under IDEA, which would have triggered a formal process for focusing on, assimilating, and
16 responding to this new information and determining its implications for educational
17 planning.

18 The District should have evaluated the Student before changing his placement.
19 School districts violate IDEA by materially changing a student’s educational program and
20 placement without conducting a reevaluation first. *Oak Harbor School District 201*, 46
21 IDELR 52 (OCR 2005). A school district changes a student’s placement whenever a change

1 is "likely to affect in some significant way the child's learning experience." *See DeLeon v.*
 2 *Susquehanna Community School Dist.*, 747 F.2d 149, 153 (3rd Cir.1984). The record
 3 clearly supports that such a change occurred when ESD transferred A.T. to Scriber STEP.

4 After a careful application of the law to the facts in the case, The ALJ correctly
 5 concluded that the Plaintiff's failure to reevaluate the Student, to offer an appropriate IAES,
 6 and to convene an IEP meeting to design an IEP had a substantive impact, thereby
 7 constituting a denial of FAPE. AR 1144, 1146-1147, 1149,1150. These findings are well-
 8 supported by the record at hearing.

9 III. CONCLUSION

10 Based on the foregoing, Defendants respectfully request an order affirming the ALJ's
 11 decision in its entirety, including awarding the Parents' reimbursement at public expense for
 12 the placement of A.T. at Provo Canyon, prospective placement at Provo Canyon, and
 13 declaration that ESD denied A.T. a FAPE.

14 Respectfully submitted this 17th day of April, 2017.

15 By: s/Charlotte Cassady
 16 Charlotte Cassady, WSBA #19848
 17 Cassady Law PLLC
 Attorney for Defendants

18 s/Nicholle Mineiro
 19 Nicholle Mineiro, WSBA #4475
 Cassady Law PLLC
 Attorney For Defendants